

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GEORGE HRDINA,

No. C 11-05173 WHA

Plaintiff,

v.

**ORDER GRANTING
ADMINISTRATIVE MOTION
FOR LEAVE TO WITHDRAW
AND RE-FILE MOTION TO
DISMISS**

WORLD SAVINGS BANK, FSB;
WORLD SAVINGS, INC.; WACHOVIA
MORTGAGE CORPORATION; and
DOES 1 through 6, inclusive,

Defendants.

On November 18, 2011, defendants filed an administrative motion for leave to withdraw their pending motion to dismiss and re-file an amended motion to dismiss (Dkt. No. 16). Plaintiff did not file an opposition. Defendants' pending motion to dismiss was filed on October 28, 2011 (Dkt. No. 4). Plaintiff's opposition to the motion to dismiss was filed on November 9, 2011 (Dkt. No. 14). Under Local Rule 7-7(e), this Court has discretion to grant defendants' administrative motion if an opposition was filed more than seven days earlier. For the following reasons, defendants' administrative motion to withdraw and re-file their motion to dismiss is **GRANTED**.

Defendants have shown good cause to withdraw their motion to dismiss. Despite reasonable investigation efforts, defendants were unaware that plaintiff George Hrdina opted out of a prior class action settlement. Defendants' motion to dismiss is largely based on their reasonable belief that Mr. Hrdina was included in the prior settlement. Mr. Hrdina's name did not

1 appear in the finalized opt-out list because he did not opt out by the original deadline. Instead,
2 Mr. Hrdina's request to opt out was later granted at the settlement approval hearing. But
3 Mr. Hrdina's name does not appear on the order granting settlement approval. The only public
4 record of Mr. Hrdina opting out was in the trial transcript. And even in the transcript,
5 Mr. Hrdina's first name was spelled incorrectly as "Joel." Therefore, record of Mr. Hrdina's
6 decision to opt out of the prior settlement would not have been discovered despite a reasonably
7 diligent search of the settlement record.

8 Mr. Hrdina will not be prejudiced by defendants' administrative motion to withdraw and
9 re-file their motion to dismiss. Defendants' proposed amendments to the motion to dismiss does
10 not raise new arguments (Holt Decl. Exh. C). Moreover, defendants informed Mr. Hrdina on
11 November 7 that they were going to file a motion to withdraw and re-file their motion to dismiss.
12 Mr. Hrdina initially agreed (Holt Decl. 2-3).

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15 **IT IS SO ORDERED.**

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17 Dated: November 23, 2011.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE